

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 567 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHIMA TEJA RABARI

Versus

STATE OF GUJARAT

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Appearance:

MR RM CHHAYA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/06/98

ORAL JUDGEMENT

Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. Heard Mr.R.M.Chhaya, learned Counsel for the petitioner and Mr.Mankad, learned AGP for the respondents.

3. This petition under Article 226 of the Constitution challenges the order dated 30-11-1996 passed by the Collector, Bhavnagar rejecting the application for regularization of petitioners' land as confirmed by the order dated 13-11-1998 passed by the State Government in revision application under Section 211 of the Bombay Land Revenue Code.

4. The petitioners are occupying the land S.No.440/1 admeasuring 90.39 sq.mts. at village Tana, Taluka Sihor, District Bhavnagar. The petitioners claim that they have been occupying the said land for the last 40 years. The petitioners made an application for regularization of their possession of the land, which is stated to be a Government waste land. The Collector, Bhavnagar, dismissed the application of the petitioners on the ground that the petitioners had merely put up wire fencing and therefore, removal of encroachment would not cause any financial loss to the petitioners. The Collector also observed in his order that it is the policy of the State Government to evict the encroachers and, therefore, the petitioners' application was not required to be granted.

5. The State Government also confirmed the said order on the aforesaid ground with an additional ground that the land in question is surrounded by public road on three sides.

6. Mr.Chhaya, learned Counsel for the petitioners has submitted that the petitioners were not given any hearing by the Collector nor was there any site inspection, nor any inspection report called for by the Collector and therefore, all the relevant factors have not been taken into consideration. Mr.Chhaya has further relied upon the Government Resolution No.1072-28-28765/L dated 8-1-1980 ( Annexure D to the petition ) and has submitted that mere fencing cannot be a relevant factor for not granting the petitioners' application. The resolution in term states that if removal does not cause any benefit to the Government or if the encroachment is not injurious to the public interest, the application for regularization should be granted. The Resolution further states that in case the application for regularization is granted the price to be charged from the holder would be at penal rate i.e. 2.5 times of the market value and other appropriate conditions may be imposed. Mr.Chhaya further states that the petitioners are ready and willing to pay the market prices as per the aforesaid formula and shall also abide by such other conditions as may be imposed.

7. Mr.Mankad learned AGP for the respondents states that the petitioners, who are encroachers have no right to get the land in their possession regularised. However, Mr.Mankad was not in a position to state whether removal of encroachment would cause any benefit to the Government or is injurious to the public interest.

8. Having heard the learned Counsel for the parties it appears to the Court that the interest of justice will be served if the impugned orders of the Collector and the State Government are set aside in view of the fact that all the relevant factors required to be considered as per the aforesaid Government Resolution are not considered by the authorities. In order to enable the petitioners to submit their case properly before the authorities, the petitioner shall be at liberty to submit a fresh application to the Collector, Bhavnagar on or before 15-7-1998. In case such an application is made by the petitioners to the Collector, Bhavnagar, the Collector shall hear and decide the application as expeditiously as possible and in any case by 15-9-1998.

9. Till the Application is decided by the Collector, the parties shall maintain status quo regarding the land in question. The petitioners shall within two weeks from today, file an undertaking before this Court that the petitioners shall not transfer or part with possession of the land in question in any manner whatsoever in favour of any other party.

10. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

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